

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.75 of 2019**

- State Of Chhattisgarh Through The District Magistrate, Durg District Durg Chhattisgarh

---- Petitioner**Versus**

1. Raman Dheemar S/o Gopal Dheemar Aged About 19 Years R/o Motimpur, P. S. Dhamdha, District Durg Chhattisgarh
2. Kirti Dheemar @ Ajay Dheemar S/o Hori Lal Dheemar Aged About 23 Years R/o Dheemar Para, Dhamdha, P. S. Dhamdha, District Durg Chhattisgarh

---- Respondents

For the Petitioner/State : Shri Afroj Khan, Panel Lawyer

For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****20.02.2019.**

1. Heard on IA No.01/2019 for condonation of delay in filing the petition.
2. On due consideration, the application is allowed and the delay of 52 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.
4. This petition is preferred against the judgment of acquittal dated 29.6.2018 passed by Fifth Additional Sessions Judge/Special Judge under the Protection of Children from Sexual Offences Act, 2012 (for short 'the Act 2012), Distt. Durg (CG) passed in Special Session Case No.75/2016 wherein the said Court acquitted the respondent for the charges under Section

354(D) read with Section 34 of the Indian Penal Code and under Sections 11 (4) read with 12 of the Act, 2012.

5. To substantiate the charges, the prosecution has examined as many as 9 witnesses. Prosecutrix is PW-1. Though she stated in her statement recorded under Section 164 CrPC before the Magistrate that the respondents followed her on 28.5.2016 up to her house at village Dhamda and on 03.6.2016 respondent Kirti Dhimar @ Ajay Dhimar proposed her to marry, but this version is not deposed before the trial Court and deposed some different story that the respondents uttered her egoist, used obscene words and proposed for marriage. Other witnesses are not the eye witness account of the incident but they have been informed about the incident by the prosecutrix. Their version is also different in different stages, i.e. at the time of the investigation and while deposing before the trial Court. Looking to the entire evidence, the trial Court opined that the witnesses have improved their version on material points and even the version of the prosecutrix is contradictory in nature, therefore, case of the prosecution is under cloud. The trial court recorded the finding of acquittal on the basis of omissions, exaggeration and contradictions in the statement of the prosecution witnesses. The view taken by the trial Court is one of the plausible view. It can be reversed only when the view taken by the trial Court is not a possible view. If two views are possible, the view in favour of the accused/respondent should be accepted. Again suspicion however strong, cannot take place on proof.

6. Looking to the factual matrix and legal aspects of the case, it is not a case where interference of this Court is required. It is not a case where the respondent should be called for full consideration of the matter.

7. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**